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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

Guidelines for Evaluating the  
Environmental Effects of  
Radiofrequency Radiation

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ET Docket No. 93-62

To: The Commission

**REPLY COMMENTS OF PAGING NETWORK, INC.**

Paging Network, Inc. ("PageNet"), by its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby replies to the comments submitted in response to the above-captioned Notice of Proposed Rulemaking ("NPRM"), ET Docket No. 93-62, 8 FCC Rcd 2849 (1993).<sup>1</sup> In this proceeding, the Commission proposes to amend and update the guidelines and procedures used for evaluating the environmental effects of radiofrequency ("RF") radiation from FCC regulated facilities.

PageNet submitted comments in this proceeding on January 25, 1994. As stated therein, PageNet supports the Commission's proposal to adopt the 1992 ANSI/IEEE standard for evaluating the environmental effects of RF radiation. However, PageNet expressed concern with the possible modification of the "categorical

<sup>1</sup> The deadline for filing reply comments in this proceeding was extended to April 25, 1994. See, Order Extending Time for Reply Comments, ET Docket No. 93-62, released February 18, 1994.

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exclusion" that has exempted private and common carrier paging operations from environmental processing under the current standards adopted in 1982. This exclusion reflects the fact that generally, the risk of exposure to unsafe levels of radiation from transmitters licensed in the land mobile radio services has been found to be extremely limited. Moreover, as PageNet indicated in its Comments, for a variety of reasons,<sup>2</sup> this fact continues to remain true.

There was substantial support among the commenters for continuing to categorically exclude common and private carrier land-mobile communications systems from routine environmental processing.<sup>3</sup> Generally, these commenters argued that because the operation of private and common carrier transmitters is (1) low power; (2) intermittent; (3) uses low-exposure antenna designs; and (4) is inaccessible to the general public, the categorical

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<sup>2</sup> For example, the fact that RF radiation is directed outward, on a horizontal plane, minimizes the incidental radiation levels present in areas located below the antenna, such as, for instance, the top floor of a building where the roof serves as a multiple user antenna site. (See study by Raymond C. Trott, submitted with PageNet's comments herein.)

<sup>3</sup> See e.g., Comments submitted by, inter alia: BellSouth Corporation ("BellSouth"), at pp. 7-8; Ericsson Corporation ("Ericsson"), at pp. 13 and 16-17; Glenayre Electronics, Inc. ("Glenayre"), at pp. 2-4; Hatfield & Dawson Consulting Engineers, Inc. ("Hatfield & Dawson"); the Land Mobile Communications Council ("LMCC"), at p. 9; McCaw Cellular Communications, Inc. ("McCaw"), at pp. 7-13; the National Association of Business and Educational Radio, Inc. ("NABER"), at pp. 4-6; the United States Telephone Association ("USTA"), at p. 3; and, the Utilities Telecommunications Council ("UTC"), at pp. 6-7.

exclusion should continue.<sup>4</sup> PageNet appreciates the effects of industry growth whereby paging systems do operate in multiple-antenna environments and desirable antenna sites will have several radiating facilities. Although the risk to the general public, due to lack of immediate proximity in the direct plane of radiation, is minimal, there continues to be a risk of exposure to workers who install the radiating elements at such sites or whose jobs otherwise require them to perform their duties near such radiating elements.

Therefore, PageNet supports adoption of rules that would require licensees of facilities at sites where RF levels are found to exceed the ANSI/IEEE standard for controlled environments to establish procedures to assure protection of these installation workers at those sites. Licensees of existing stations must be

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<sup>4</sup> Additionally, Glenayre argued that potential worker exposure to RF radiation should not be a basis for removing categorical exclusions. Rather it states, and PageNet agrees, that exposure threats can be handled in the industry by training personnel and increasing awareness of specific actions required during test and maintenance procedures. The only party that commented to the contrary was Doty-Moore Tower Services, Inc. ("Doty-Moore"), a vendor of RF "protective equipment" having a vested interest in the marketability of such equipment. Doty-Moore submitted a study purporting to show that "[i]n situations where clusters of antennae are present, . . . it is evident that virtually every locale within the vicinity presents RF levels in excess of the C95.1-1992 MPE level at all times." Doty-Moore Comments at 1. The study does not indicate power levels or technical parameters of the facilities studied. Moreover, such a finding is not in itself inconsistent either with the position that workers performing tasks in immediate proximity to radiating elements could yet be adequately protected by procedures designed to prevent extended periods of exposure or with findings that show RF radiation is reduced to well within safe levels in areas, even close in areas, located below the horizontal plane of the antenna(s).

afforded a reasonable period to bring existing facilities into compliance. Moreover, PageNet believes that site owners, not individual licensees, should be responsible for collecting information, and ensuring compliance with revised environmental standards. As set forth in its Comments, PageNet believes that only the site manager/owner/landlord is in a position to possess the necessary data respecting facilities and licensees operating at multiple user antenna farms.

There were several commenters in this proceeding that advocated similar positions. In particular, NABER suggested that once the Commission's new guidelines in this area become "final," "there should be an amnesty period" during which "manufacturers and users" of existing land mobile equipment "may verify the safety of their equipment and installations and take whatever corrective measures may be necessary." NABER Comments at 6. Additionally, Cohen Dippell and Everist, P.C. ("CD&E") emphasized that, "[w]ithin the various FCC branches, it appears that administrative differences exist, whether at the application or renewal stage, which result in distinctly different assessments." CD&E Comments at 2-3. Therefore, CD&E suggested that station licensees should be asked to show compliance at the time of their license renewals or, with the filing of an application for modification of facilities. Id. Ericsson suggested that compliance with a new standard should not be required for two years from the adoption of either a definitive SAR measurement standard or an equivalent standardized numerical analysis

technique. Ericsson Comments at 14-15. McCaw submits that application of any new compliance rules for Part 21 or 22 base stations should be prospective only. McCaw Comments at 13-15. In addition, Doty-Moore asserts that only landlords/site managers are capable of coordinating site-wide power reductions or shut downs where necessary to protect persons in areas found to have high radiation levels. These comments demonstrate the need for a sensible phase-in period for the new rules and the reasonableness of requiring site owners/managers to maintain RF compliance data for their transmission sites.

Finally, PageNet supports the position taken by several commenters encouraging the Commission to preempt state and local RF restrictions if ANSI/IEEE C95.1-1992 is adopted, to ensure consistent application of these standards.<sup>5</sup> Specifically, McCaw describes numerous instances where state or local regulation has delayed or prevented siting of cellular facilities and, as a result, threatened the public's interest in a high quality, low cost ubiquitous and spectrum-efficient cellular communications network. McCaw Comments at 17-27. Similarly, Celpage discusses Puerto Rico's regulations which impose "enormous expense and compliance burdens" on "radio paging and cellular telephone" service and, as a result, "substantially affect the conduct or development of interstate communications." Celpage Comments at 4-8. PacTel cites to examples of local authorities imposing

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<sup>5</sup> See e.g., Comments filed by: Celpage, Inc. ("Celpage") at pp. 4-8; CD&E at p.3; McCaw at 17-30; and PacTel Corporation ("PacTel") at pp. 3-6.

special conditions on, or overturning, use permits to modify existing cellular antennas. Consequently, the deployment of service is delayed thereby frustrating the Commission's objectives for efficient radio communications services with adequate facilities. PacTel Comments at 4-6.

In addition to the practical concerns expressed by the Commenters, there is legal authority to support an FCC decision to preempt conflicting state and local regulations of RF exposure. In People of the State of California v. FCC, 798 F.2d 1515, 1519-1520 (D.C. Cir. 1986), for example, the Court stated that while states retain authority over the common carriage aspects of intrastate radio services, the Commission has exclusive jurisdiction over the technical radio transmission aspects of such services. Furthermore, preemption over state or local rulings on EMF emissions is consistent with FCC cases preempting local regulations regarding radio frequency interference. See, e.g., In the Matter of Mobilecomm of New York, Inc., 2 FCC Rcd 5519 (Com. Car. Bur. 1987).

#### CONCLUSION

Consistent with the comments filed in this proceeding, the Commission should maintain the categorical exclusion of radio and common carrier transmitting equipment from environmental processing, except in cases where protection of workers is deemed necessary due to RF levels that exceed the limit for controlled environments, as at multi-emitter sites, based on data required to

be assembled and maintained by the site owners/managers. In response to the adoption of a revised environmental standard, the Commission should allow sufficient time for carriers to bring their existing systems into compliance. Finally, the Commission should preempt conflicting state and local environmental regulations.

Respectfully submitted,

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